AMENDMENTS TO THE DRAWINGS

Please substitute the original filed drawings with the attached Replacement Sheets.

REMARKS

Drawing Objections

Figures 1 and 2 have been objected to for appearing solely as undifferentiated black boxes which do not copy well. The Examiner's objections have been addressed in good faith. No new matter has been introduced. Specifically, each black box in Figures 1 and 2 has been replaced with boxes shaded with unique patternd capable of being copied with no ill effect. For consistency, each shaded shape in Figure 6 has also been replaced with shapes shaded in identifying patterns capable of being copied with no ill effect. Corrected drawing sheets are herewith submitted in compliance with 37 C.F.R. 1.121(d). Accordingly, applicant respectfully requests that the objections to Figures 1 and 2 be withdrawn.

Status of the Claims

Claims 1 – 51 are currently pending.

Claims 1 -51 stand rejected.

Claims 2, 9, 21, 28, 35, 40, and 47 are canceled herein.

Claims 1, 8, 12, 19, 27, 34, 38, 45 are amended herein.

In light of the above-amendments and remarks to follow, reconsideration and allowance of this application are requested.

Claim Rejections

Claims 1, 3, 8, 12, 13, 17, 19, 20, 24, 27, 29, 34, 38, 39-40, 42-44, 45-46 have been rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over U.S. Patent No. 5,163,010 to Klein et al. (hereafter "Klein"). Claims 2, 4-7, 9-11, 14-16, 18, 21-23, 25, 26, 28, 30-33, 35-37, 41, and 47-51 have been rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over Klein in further view of U.S. Patent no. 4,767,917 (hereafter "Ushikubo"). Applicant respectfully traverses these rejections.

Obviousness Rejections

To establish a *prima facie* case of obviousness, three basic criteria must be met. First there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the references or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations. The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art and not be based on the applicant's disclosure. In re Vaeck, 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991); MPEP 2143. Here, the Examiner has failed to establish a *prima facie* case of obviousness because neither Klein nor the combination of Klein and Ushikubo teaches or suggests all the claim limitations of independent claims 1, 8, 12, 19, 27, 34, 38, and 45.

The present invention is directed to a hair care or cosmetic dispensing system that allows for the purchase of these products, authenticates the operator of the dispensing apparatus, updates the inventory data of the apparatus, and schedules for delivery of additional hair care or cosmetics based on the updated inventory data. Neither Klein nor Ushikubo is directed to a product distribution system that contemplates these novel aspects of a hair care or cosmetic distribution system. Specifically Klein is directed to an apparatus for formulating custom mixed cosmetic products, directed to solving the problem of preparing custom-tailored cosmetic shade for individuals. (*See, e.g.,* Klein, col. 1, lns. 19-24). The present invention, on the other hand, is directed to solving a completely different problem, namely, facilitating a cosmotologist's or other beautician's ability to properly manage hair care or cosmetic inventory efficiently on a need-based basis, thereby eliminating problems associated with hair care or cosmetic shelf-life, storage space, and inventory record-keeping and ordering. (*See, e.g.*, Application at ¶¶ [0003] – [0005]).

In fact, nowhere does Klein teach or suggest a hair care or cosmetic distribution system that has the combined benefits of allowing for the purchase of a product, the authentication of the operator of the system, the updating of hair care or cosmetic inventory dispensed by the system, the scheduling of hair care or cosmetic refills as well as the selection and dispensing of the product itself all through a single, user-friendly vending machine interface as required by the instant claims. In fact, Klein is solely directed to an apparatus that formulates custom mixed cosmetic products independent of any functional system among beautician, product provider, and client. Consistent with the fact that Klein is directed solely to an apparatus for formulating the correct shades of cosmetics, nowhere does Klein even mention the concept of purchasing the dispensed cosmetic, a step required by the instant claims.

In addition, as admitted by the Examiner, Klein does not disclose "restricting sales to authorized personnel." (January 7, 2008 Office Action at 5). To cure this deficiency, the Examiner turns to Ushikubo. Ushikubo is directed to an automatic vending machine that validates a user through use of a specified card. (*See, e.g.* Ushikubo at "Abstract"). Ushikubo solely is concerned with validating vending machine users and simply does not concern a cosmetic product delivery system. Ushikubo certainly does not contemplate a product delivery system that has the combined benefits of allowing for the updating of hair care or cosmetic inventory dispensed by the system, the scheduling of delivery of cosmetic to refill the system as well as the selection and dispensing of the product itself through a single, user-friendly vending machine interface as required by the instant claims.

"To imbue one of ordinary skill in the art with knowledge of the present invention, when no prior art reference or references of record convey or suggest that knowledge, is to fall victim of the insidious effect of hindsight syndrome, wherein that which only the inventor taught is used against the teacher." W.L. Gore & Assoc. v. Garlock, Inc., 721 F.2d 1540, 1553 (Fed. Cir. 1983). The prior art must to be judged based on a full and fair

consideration of what that art teaches, not by using applicants' invention as a blueprint for gathering and modifying various bits and pieces in an attempt to reconstruct applicants' invention. The Examiner cannot simply change the principle of the operation of the reference or render the reference inoperable for its intended purpose to render the claims unpatentable. Accordingly, it is submitted that the Examiner has succumbed to the lure of prohibited hindsight reconstruction.

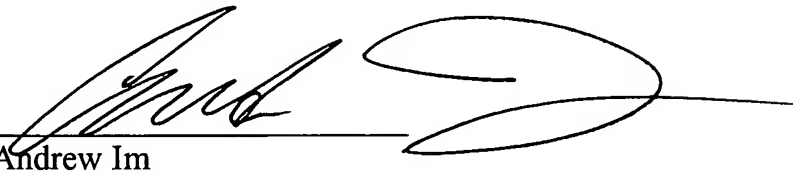
Therefore, it is respectfully submitted that contrary to the Examiner's assertion, neither Klein nor Ushikubo, independently or in combination teaches or suggests a cosmetic delivery system that allows for the purchase of a product, authentication of the operator, udpating of inventory, and the scheduling of a delivery, as required by independent claims 1, 8, 12, 19, 27, 34, 38, and 45. Accordingly, the Examiner has failed to establish a *prima facie* case of obviousness because these references independently or in combination fail to teach or suggest all the claim limitations of independent claims 1, 8, 12, 19, 27, 34, 38, and 45, or any of claims 2-7, 10-11, 13-18, 20-26, 28-33, 35-37, 39-44, and 46-51 respectively dependent on claims 1, 8, 12, 19, 27, 34, 38, and 45. Accordingly, applicants respectfully request that the rejection of the instant claims be withdrawn.

On the basis of the above amendment and remarks, reconsideration and allowance of claims 1-3, 5-12, 14-17, and 19-20 are respectfully requested.

Applicant believes no fee is due with this response. However, if a fee is due, please charge our Deposit Account No. 50-0624, under Order No. **NY-WELLA-204-US** (10207602) from which the undersigned is authorized to draw.

Dated: April 7, 2008

Respectfully submitted,



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